

SUBCHAPTER G: DESALINATION, PROCEDURAL
§§295.300 - 295.306
Effective December 8, 2016

§295.300. Applicability.

(a) This subchapter only applies to diversion and use of marine seawater for desalination, diversion of seawater from a bay or arm of the Gulf of Mexico for desalination solely for industrial purposes, and conveyance of treated marine seawater through the bed and banks of a flowing stream. The commission may issue a permit under this subchapter to authorize a diversion of state water from the Gulf of Mexico or a bay or arm of the Gulf of Mexico for desalination and use if:

(1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or

(2) the water at the proposed diversion point contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

(b) A person may divert and use state water that consists of marine seawater or seawater without obtaining a permit if subsection (a) of this section does not apply.

(c) A person may not begin construction of a facility for the diversion of marine seawater or seawater without obtaining a permit until the person has provided data to the commission demonstrating:

(1) based on the location of each proposed diversion location, that subsection (a)(1) of this section does not apply; and

(2) based on the analysis of samples taken at the water source for each proposed diversion location over a period of at least one year, in accordance with the requirements set out in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration) that subsection (a)(2) of this section does not apply.

(d) A person who has begun construction of a facility for the diversion of marine seawater or seawater without obtaining a permit because the person has demonstrated that subsection (a)(2) of this section does not apply is not required to obtain a permit for the facility if the total dissolved solids concentration of the marine seawater or seawater at the water source subsequently changes so that subsection (a)(2) of this section applies.

(e) This subchapter does not apply to a diversion of marine seawater from a point of diversion located in a bay or estuary unless the diversion is solely for the purpose of desalination of seawater for industrial use under Texas Water Code (TWC), §11.1405.

(f) TWC, Chapter 11, applies to a permit or authorization under this subchapter in the same manner as that chapter applies to a permit or authorization under that chapter which is not subject to this subchapter.

(g) If a person seeks to utilize a facility that was constructed or permitted for the diversion of seawater solely for the purpose of desalination for industrial use under this subchapter to divert seawater for another use, the person must first obtain a water right permit pursuant to provisions of TWC, Chapter 11, other than TWC, §11.1405.

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§295.301. Definitions.

The following words or phrases have the following meanings in this subchapter unless the context clearly indicates otherwise:

(1) Affected person--A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. The determination of whether a person is affected shall be governed by §55.256 of this title (relating to Determination of Affected Person).

(2) Marine seawater--Water that is derived from the Gulf of Mexico for desalination.

(3) Seawater--Water that is derived from a bay or arm of the Gulf of Mexico for desalination and use solely for industrial purposes.

(4) Three-mile seaward boundary--The three nautical mile boundary developed by the Texas General Land Office for the Dispersant Use Pre-Approval Zone.

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§295.302. Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater.

(a) An application for diversion of seawater from a bay or arm of the Gulf of Mexico for industrial purposes or for diversion of marine seawater must be submitted in accordance with §295.2 of this title (relating to Preparation of Application) and include, for each applicant, the full name, post office address, telephone number, and federal identification number. If the applicant is a partnership, it shall be designated by the firm name followed by the words "a partnership." If the applicant is acting as trustee for another, it shall be designated by the trustee's name followed by the word "trustee." If one other than the named applicant executes the application, the name, position, post office address, and telephone number of the person executing the application shall be given.

(b) The application shall include the signature of the applicant in accordance with §295.14 of this title (relating to Signature of Applicant). Each applicant shall subscribe and swear to the application before any person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the application.

(c) The application shall state the location of point(s) of diversion and provide latitude and longitude coordinates in decimal degrees to six decimal places for each point.

(d) The total amount of marine seawater or seawater from a bay or arm of the Gulf of Mexico to be diverted and used shall be stated in definite terms, i.e., a definite number of acre-feet annually and the application shall state the maximum rate of diversion in gallons per minute or cubic feet per second for each diversion point.

(e) The application shall state each purpose of use in definite terms. If the application requests authorization to use marine seawater for multiple purposes, the application shall expressly state an annual amount of marine seawater to be used for the multiple purposes as well as for each purpose of use.

(f) The applicant shall provide evidence that the marine seawater or seawater diverted from a bay or arm of the Gulf of Mexico will be treated in accordance with applicable commission rules, based on the purpose for which the water is to be used, before it is used.

(g) The application must include a water conservation plan meeting the requirements contained in §297.208 of this title (relating to Consideration of Water Conservation).

(h) The application shall contain information describing how it addresses a water supply need in a manner that is consistent with the state water plan or the

applicable approved regional water plan or, in the alternative, describe conditions that warrant a waiver of this requirement.

(i) The application must include a determination of the total dissolved solids concentration of the marine seawater or seawater at the water source based on monthly sampling and analysis, as described in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration), and provide the data collected to the commission.

(j) The application shall provide documentation that the applicant will take reasonable measures to minimize impingement and entrainment associated with the diversion of marine seawater or seawater as described in §297.209 of this title (relating to Impingement and Entrainment).

(k) The application shall include documentation of the results of the consultation with the Texas Parks and Wildlife Department and the Texas General Land Office regarding the point or points from which a facility the person proposes to construct may divert marine seawater or seawater.

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§295.303. Review Timeframes.

(a) The review timeframes in this section only apply to applications which are determined to be administratively complete when submitted. If the application is not administratively complete, the application will not be considered for expedited processing under this section.

(b) Applications shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application by the executive director.

(c) After an application is determined by the executive director to be administratively complete, the executive director shall commence a technical review as necessary and appropriate. For purposes of this subchapter, the technical review period is that period of time beginning with the completion of the initial review period and will continue for a period of time not to exceed 60 working days, except as extended pursuant to subsection (d) of this section.

(d) The applicant shall be promptly notified of any additional technical material necessary for a complete review. If the applicant provides the information within the technical review period prescribed by subsection (c) of this section, the executive director will complete processing of the application within the technical review period extended by the number of days taken by the applicant to provide

the additional data. If the necessary additional information is not received by the executive director prior to expiration of the original technical review period and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director may return the application to the applicant. In no event, however, will the applicant have less than 30 days to provide the technical data before an application is returned. And, in no event shall the executive director have less than 60 working days, exclusive of any time spent waiting for submission of additional information, to complete the technical review. Decisions to return the application to the applicant during the technical review stage will be made on a case-by-case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision instead of having the application returned.

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§295.304. Notice of Application to Divert Marine Seawater or Seawater.

(a) At the time that the technical review of an application for a permit to divert marine seawater or seawater has been completed and the technical memoranda have been filed by the executive director with the chief clerk of the commission, the chief clerk shall give notice by email to the county judge for each county in which the proposed facility is proposed to be located, the Texas Parks and Wildlife Department, the Texas General Land Office, and any person who has submitted a written request to the Office of the Chief Clerk providing a valid email address and asking to receive notice of applications filed under this subchapter. The notice shall also be posted on the commission's website.

(b) The notice must:

- (1) state the name and address of the applicant;
- (2) state the date on which the application was received by the commission;
- (3) state the date the application was filed by the executive director with the chief clerk as required by §281.17(a) or (b) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness);
- (4) state that the executive director has determined that the technical review of the application is complete;
- (5) state the application number;

(6) state the purpose and amount of the proposed diversion of marine seawater or seawater;

(7) identify the location of the diversion point(s);

(8) state the executive director's recommendation regarding the application;

(9) state that a person may submit written comments and that an affected person, the applicant, the executive director, and the commission may request a contested case hearing and indicate the deadlines for doing so;

(10) include the name and address of the agency, and the telephone number of an agency contact from whom interested persons may obtain future information; and

(11) give any additional information the commission considers necessary.

(c) Requests for a contested case hearing will be processed in accordance with Chapter 55, Subchapter G of this title (relating to Requests for Contested Case Hearing and Public Comment on Certain Applications).

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§295.305. Requirements for an Authorization to Convey Treated Marine Seawater in Bed and Banks.

(a) The application shall include evidence that the marine seawater conveyed under a permit subject to the requirement in this section will be treated so as to meet standards that are at least as stringent as the water quality standards adopted by the commission and applicable to the receiving stream or impoundment. More stringent treatment may be required if the commission determines it is necessary to protect water quality.

(b) Treated marine seawater that is conveyed under an authorization granted under this section may be used only by the person to whom the authorization is granted.

(c) This section does not prohibit a person from conveying treated marine seawater in any other manner authorized by law.

(d) A person wishing to place treated marine seawater into a stream or watercourse, convey the treated marine seawater in the watercourse or stream,

and subsequently divert such treated marine seawater shall file an application with the commission containing the following information:

- (1) the name, mailing address, and telephone number of the applicant;
- (2) the name of the stream and the locations of the point of discharge and diversion as identified on a United States Geological Survey 7.5-minute topographical map(s);
- (3) the source, amount, and rates of discharge and diversion;
- (4) a description of the water quality of the water discharged and the permit number and name of any related discharge permit;
- (5) an assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow needs;
- (6) the estimated amount of treated marine seawater that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses from the point of discharge to the point of diversion, including the method used to calculate the losses;
- (7) an accounting plan that demonstrates that the applicant will only divert the amount of treated marine seawater discharged less losses; and
- (8) any other information the executive director may need to complete an analysis of the application.

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§295.306. Notice of Application to Convey Treated Marine Seawater in Bed and Banks.

(a) Notice of an application to convey treated marine seawater in the bed and banks of a stream or watercourse shall be provided by first class mail, postage prepaid, by the commission to every water right holder of record downstream of the discharge point at least 30 days prior to commission consideration of the application. Notice shall also be provided to any person who has submitted a written request to the Office of the Chief Clerk providing a valid email address and asking to receive notice of applications filed under this subchapter. The notice shall be posted on the commission's website.

(b) No published notice shall be required for an application under this section.

(c) The applicant shall be responsible for the costs of providing notice under this section.

(d) The notice must:

(1) state the name and address of the applicant;

(2) state the date on which the application was received by the commission;

(3) state the date the application was filed by the executive director with the chief clerk as required by §281.17(a) or (b) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness);

(4) state that the executive director has determined that the technical review of the application is complete;

(5) state the application number;

(6) state the purpose of use for the conveyed treated marine seawater;

(7) state the executive director's recommendation regarding the application;

(8) state that a person may provide written comments on the application and indicate the deadline for doing so;

(9) for applications that do not request authorization to convey treated marine seawater through a reservoir or impoundment, the notice shall state that a person may not request a contested case hearing;

(10) for applications that request authorization to convey treated marine seawater through a reservoir or impoundment, the notice shall state that an affected person, the commission, the executive director, and the applicant may request a contested case hearing and indicate the deadline for doing so;

(11) include the name and address of the agency, and the telephone number of an agency contact from whom interested persons may obtain future information; and

(12) give any additional information the commission considers necessary.

(e) Requests for a contested case hearing will be processed in accordance with Chapter 55, Subchapter G of this title (relating to Request for Contested Case Hearing and Public Comment on Certain Applications).

(f) Nothing in this section is intended to deny any additional notice to an affected person that may be required under the Texas Administrative Procedure Act.

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